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20 *Cleveland; and William Richard Wilson*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ANITA WHITE,

21 Plaintiff,

22 vs.

23 EDEBITPAY, LLC, et al.,

24 Defendants.

CASE NO. CV11-06738 CBM (FFMx)

CLASS ACTION

**PARTIES' FED. R. CIV. P. 26
REPORT**

Event: Scheduling Conference

Date: February 13, 2012

Time: 10:00 a.m.

Pursuant to Federal Rule of Civil Procedure 26(f), L.R. 26-1, this Court's Standing Order [Docket #3]; and the Minute Order Setting Scheduling Conference [Docket #16], Plaintiff Anita White ("Plaintiff") and Defendants EDebitPay, LLC; Platinum Online Group, LLC; Dale Paul Cleveland; and William Richard Wilson (collectively, the "EDP Defendants"), by and through their respective counsel, hereby submit this joint report.

I.

THIS COURT'S STANDING ORDER AND SCHEDULING ORDER TOPICS

A. Each Parties' Brief Statement of the Case

1. Plaintiff's Statement

This action and the Demand for Jury Trial were filed on August 16, 2011. Plaintiff is a senior citizen who alleges that she was the victim of internet scams perpetrated by Defendants. Specifically, the EDP Defendants and Defendant Unified Savings unlawfully obtained Plaintiff's checking account information when she applied for an on-line payday loan. The Defendants used Plaintiff's bank account information to generate "remotely created checks" in attempts to fraudulently withdraw hundreds of dollars from Plaintiff's account, purportedly for membership in sham "coupon" clubs that Plaintiff never joined. Defendants' conduct violated the Electronic Funds Transfer Act (15 U.S.C. § 1693e), the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, et seq.), and the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, et seq.). Plaintiff has further alleged common law claims for conversion, fraud, and invasion of privacy. Plaintiff seeks to represent a class of similarly defrauded consumers.

2. EDP Defendants' Statement

EDP Defendants deny the allegations. EDP does not offer payday loans to consumers. It is not a lender. Rather, to the best of their knowledge, third-party marketing affiliates offer loans to consumers. Each of the Plaintiffs entered the

1 marketing affiliate network through different websites owned and operated by
2 different third-party affiliates. Through certain online interactions and/or
3 transactions controlled by Plaintiffs while using third-party affiliate websites,
4 Plaintiffs were directed to EDP's Saving Pays Club website. To the best of their
5 knowledge, Defendants did not collect any monies from the named Plaintiff,
6 which raises issues of standing in this case.

7 **3. Defendant Unified Savings**

8 Plaintiff's pre-filing investigation led Plaintiff to believe that Defendant
9 Unified Savings was affiliated with the EDP Defendants. Plaintiff subsequently
10 learned that Defendant Unified Savings is engaged in an online scam that is
11 similar to, but separate and apart from, the alleged scam perpetrated by the EDP
12 Defendants. Further investigation has revealed that "Unified Savings" is, in fact, a
13 fictitious name used by the entity Direct Benefits Group, LLC, and the summons
14 and complaint are out for service. EDP Defendants have no affiliation with
15 Defendant Unified Savings.

16 **B. Basis for Subject Matter Jurisdiction**

17 This Court has jurisdiction over this action pursuant to the Class Action
18 Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual class
19 members exceed the sum or value of \$5,000,000, exclusive of interests and costs,
20 and more than two-thirds of the proposed plaintiff class, on the one hand, and
21 Defendants, on the other hand, are citizens of different states. This Court also has
22 jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the claim under the
23 Electronic Funds Transfer Act arises from federal law.

24 **C. Brief Description of the Key Legal Issues**

25 The key legal issues are whether this case is appropriate for class
26 treatment, whether Defendants' attempts to withdraw funds from Plaintiff's
27 checking account were unlawful, and whether the putative class members
28 consented to the transaction.

1 **D. Plaintiff's Estimate of the Realistic Range of Probable Damages**

2 Plaintiff anticipates that there are potentially two damages subclasses in this
3 case: Consumers who allegedly incurred damages in the form of unauthorized
4 "membership application charges" of roughly \$99 that Defendants withdrew
5 from their checking accounts (the "Application Charge Subclass").

6 Additionally, there are numerous consumers, including Plaintiff, who allegedly
7 did not have sufficient funds in their checking accounts to pay the \$99
8 application charge that Defendants attempted to withdraw. These consumers
9 allegedly incurred substantial non-sufficient funds charges when the
10 unauthorized Remotely Created Checks that were generated by Defendants
11 bounced (the "NSF Subclass"). As to the EDP Defendants, the total
12 compensatory damages for the Application Charge Subclass and the NSF
13 Subclass is alleged to exceed amount-in-controversy requirements. Plaintiff
14 does not yet have sufficient information to calculate the compensatory
15 damages for which Defendant Unified Savings may be liable.

16 In addition to these special damages, Plaintiff and the Plaintiff class claim
17 entitlement to non-economic damages for mental suffering, anxiety, and emotional
18 distress caused by Defendants unlawfully making withdrawals from their checking
19 accounts. Plaintiff and the Plaintiff class also claim to be entitled to statutory
20 attorneys' fees, and a subclass of senior citizens may be entitled to statutory
21 damages of \$5,000.00 per defrauded senior.

22 Defendants, on the other hand, deny that Plaintiffs are entitled to any relief
23 or that Plaintiffs have been damaged.

24 **E. Prospects of Settlement**

25 The parties participated in a private mediation on January 24, 2012, along
26 with plaintiffs in the related action *Deffenbaugh, et al. v. EDebitPay, L.L.C., et al.*,
27 CV-11-3024 (EMC) (the "*Deffenbaugh* Action") (see Notice of Pendency of Other
28 Action [Docket #18]), in an effort to globally resolve both actions. The cases did

1 not settle at the mediation, but the parties in this and the *Deffenbaugh* Action are
2 continuing to discuss a potential resolution of the two cases.

3 One of the major obstacles to settlement in this case is the poverty of the
4 EDP Defendants, who are subject to a \$3.78 million judgment that has been
5 entered in an action brought against them by the Federal Trade Commission.
6 Although there is an insurance policy that may provide limited coverage for some
7 of the claims in this and the *Deffenbaugh* Action, the policy limits are far below
8 the potential damages. To complicate matters further, the policy is a “wasting” or
9 “self-liquidating” policy in which the limits are *inclusive* of defense costs. In light
10 of the above, the parties in this and the *Deffenbaugh* Action are attempting to
11 determine whether this case can be litigated and/or resolved in a cost-effective
12 manner that preserves as much of the policy as possible for the putative class. The
13 parties agree that this action and the *Deffenbaugh* Action should be consolidated.
14 The EDP Defendants believe that the *Deffenbaugh* Action should be transferred to
15 this Court, as the EDP Defendants and their counsel are located in this District,
16 White counsel are located in this District, most all documents and evidence are
17 located in this District, and half of the named plaintiffs in the two Actions reside
18 in this District. The parties in both Actions are discussing possible consolidation.

19 **F. Likelihood of Additional Parties**

20 Plaintiff has propounded discovery on the EDP Defendants regarding the
21 identity of the third-party payment processor and depository bank involved in the
22 withdrawals from Plaintiff’s bank account. Plaintiff intends to add these parties as
23 named defendants in this case.

24 **G. Manual of Complex Litigation**

25 The parties do not foresee this case presenting unusual complexities not
26 ordinarily found in class action cases, and do not propose the use of any
27 procedures from the Manual for Complex Litigation at this time.

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1 **H. Proposed Completion Date for All Discovery**

2 The parties agree that discovery in this action should be coordinated with
3 the first-filed *Deffenbaugh* Action, so as to avoid unnecessary duplication of
4 defense costs and needless consumption of the self-liquidating insurance policy.
5 To that end, the parties propose that the discovery and all other deadlines in this
6 action mirror those in the *Deffenbaugh* Action. The proposed date for completion
7 of all discovery in the *Deffenbaugh* Action is May 17, 2013. A copy of the Joint
8 Case Management Statement that was recently filed in the *Deffenbaugh* Action is
9 attached hereto as Exhibit “A”.

10 **I. Contemplated Motions**

11 Plaintiffs will file a Motion for Class Certification, and propose that the
12 deadline for filing the motion mirror the September 21, 2012 deadline proposed in
13 *Deffenbaugh* Action. See Exhibit “A”.

14 EDP Defendants may file a motion for summary judgment and/or summary
15 adjudication and/or a motion for judgment on the pleadings.

16 **J. Trial Type, Estimated Length, and Trial Attorneys**

17 Plaintiff requests a jury trial. The parties are unable to provide a reasonable
18 estimate of the length at this time due to the fact that discovery in this action and
19 the *Deffenbaugh* Action is still in the early stages.

20 Mike Arias and Denis Delja will try the case for Plaintiff. Michael Mallow
21 and Christine Reilly will try the case for the EDP Defendants.

22 **K. Proposed Dates for Pre-Trial Conference and Trial**

23 The parties again propose mirroring the pre-trial conference and trial dates
24 proposed in *Deffenbaugh* Action, which are to be set 30 and 75 days, respectively,
25 after the Court’s ruling on dispositive motions. The proposed deadline for filing
26 dispositive motions in the *Deffenbaugh* Action is June 28, 2013. See Exhibit “A”.

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1 with accompanying load files. Plaintiffs reserve their right to seek production of
2 specific documents in native format, if necessary.

3 **D. Issues Regarding Privilege and the Need for a Protective Order**

4 The parties agree that the exchange of personal contact information of class
5 members involves protected privacy interests. Plaintiff proposes that those
6 interests can be addressed through a protective order designating the class
7 members' contact information as confidential. *See, e.g., Hill v. Eddie Bauer*, 242
8 F.R.D. 556, 563 (C.D. Cal. 2007).

9 **E. Changes to Discovery Limitations**

10 The parties do not propose any additional changes or limitations to
11 discovery at this time.

12 **F. Other Orders**

13 The parties do not propose any additional orders at this time.
14

15 DATED: February 6, 2012

ARIAS OZZELLO & GIGNAC LLP

16 By: /s/ Denis M. Delja

17 Mike Arias
18 Denis M. Delja

19 *Attorneys for Plaintiff*

20 DATED: February 6, 2012

LOEB & LOEB LLP

21 By: /s/ Christine M. Reilly

22 Michael L. Mallow
23 Christine M. Reilly

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25 *Platinum Online Group, LLC; Dale Paul*
26 *Cleveland; and William Richard Wilson*
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